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11  
12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION  
14

15 *In re: Hyundai and Kia Engine*  
16 *Litigation*

CASE NO. 8:17-cv-00838

Member Cases:  
8:17-cv-01365-JLS-JDE  
8:17-cv-02208-JLS-JDE  
2:18-cv-05255-JLS-JDE  
8:18-cv-00622-JLS-JDE

Related Case:  
8:18-cv-02223-JLS-JDE

**HYUNDAI MOTOR AMERICA'S  
SUBMISSION IN RESPONSE TO  
KNIGHT MOTORS LP'S  
OBJECTION TO PROPOSED  
CLASS ACTION SETTLEMENT**

**Preliminary Statement**

Knight Motors’ objection attempts to infuse disputed issues from another active litigation between Knight Motors and Hyundai Motor America (“HMA”) into this action, which have no bearing on the fairness, reasonableness, and adequacy of the proposed class settlement before this Court.

Knight Motors is a used car dealer and a class member of a prior class settlement reached in *In re: Hyundai Sonata Engine Litigation*, No. 5:15-cv-01685-BLF (N.D. Cal) (“the *Mendoza* action”) that included owners and lessees of 2011-2014 Hyundai Sonatas equipped with a Theta II 2.0 liter or 2.4 liter GDI engine. That settlement was granted final approval on January 23, 2017 and provided benefits such as (1) a 10-year/120,000-mile warranty extension, (2) reimbursement for past repairs, rental car, and towing costs, and (3) compensation for a sold or traded-in vehicle. (*See* Dkt. 158-1 at PageID.6234-6239.) Upon learning of HMA’s practice of generously compensating owners of eligible class vehicles that qualified for inspection and repair, Knight Motors began collecting eligible Sonatas *en masse* as part of a business strategy, obtaining over 700 class vehicles as part of its scheme and presenting over 600 to Hyundai for buyback—many apparently intentionally disabled to qualify for greater settlement benefits. (*See* Dkt. 158 at 56.)<sup>1</sup> HMA and Knight Motors have been engaged in litigation over Knight Motors’ exploitation of the *Mendoza* settlement as well as other disputed allegations underlying Knight Motors’ objection.<sup>2</sup> (*See* Dkt. 158-1 at PageID.6105-6118).

The Court need not delve into the merit of these allegations to evaluate the settlement under consideration. Knight Motors’ submission only raises a handful of

<sup>1</sup> *See also* ADT Staff, *Top 10 Fraud Stories of 2019*, Auto Dealer Today (Dec. 30, 2019), <https://www.autodealertodaymagazine.com/359842/top-10-fraud-stories-of-2019>.

<sup>2</sup> Knight Motors quotes without context from a discovery conference with Judge Philip A. Ignelzi from the litigation against HMA. (*See* Dkt. 158 at 12). The quote misleadingly suggests that the court agreed with Knight Motors’ contentions on fraud, when upon examination of the transcript, the court is merely summarizing (footnote continued)

1 issues that actually relate to this proposed settlement, none of which provide  
 2 sufficient bases to deny approval. As detailed more fully below, Knight Motor  
 3 incorrectly contends this settlement dilutes the settlement benefits provided under  
 4 *Mendoza* and that used car dealers are included in the class but excluded from  
 5 settlement benefits. Both statements are wrong; all benefits from the *Mendoza*  
 6 action endure, and used car dealers remain eligible for all remedies provided by this  
 7 settlement with the one exception of the Lifetime Warranty (although that benefit  
 8 extends to consumers who buy *from* a used car dealer). Knight Motors also takes  
 9 issue with the opt-out procedure, which is not unique to this action and was not  
 10 dictated by the settling parties or this Court. None of the purported issues raised by  
 11 Knight should disrupt granting final approval.

## 12 Argument

### 13 **I. BENEFITS FROM THE MENDOZA SETTLEMENT ARE NOT** 14 **DIMINISHED BY THIS CLASS SETTLEMENT**

15 Knight Motors incorrectly contends the proposed settlement here somehow  
 16 alters the terms of the *Mendoza* settlement. (Dkt. 158 at 13.) All benefits provided  
 17 under the settlement in the *Mendoza* action remain in place and are not affected or  
 18 diminished by the terms of this settlement. And indeed, even though HMA obtained  
 19 full claims releases in connection with the *Mendoza* settlement that would preclude  
 20 any additional relief from class members such as Knight Motors, it generously  
 21 agreed to allow *Mendoza* class members to participate in this settlement as well. In  
 22 most scenarios, class members from the *Mendoza* action will enjoy extended  
 23 benefits and additional relief under the proposed settlement here. For example,  
 24 owners of 2011-2014 Sonatas are covered under the 10-year/120,000-mile warranty  
 25 extension from the *Mendoza* action; however, when that expires (as it soon will for  
 26 owners of 2011 Sonatas), they, with the exception of commercial entities, will be

27 \_\_\_\_\_  
 28 Knight Motors' position in an effort to understand the relevance argument for a  
 (footnote continued)

1 covered under the Lifetime Warranty provided by the settlement here. In addition,  
2 any claims for reimbursement for repair or repair-related expenses that were not  
3 made in a timely manner and within the designated claims period under the  
4 *Mendoza* settlement may be made now, along with additional avenues for  
5 compensation (*e.g.*, inconvenience due to repair delays, loss of vehicle by engine  
6 fire, and rebate for buying another Hyundai or Kia).

7 Although installation of the KSDS is a pre-requisite to obtaining Lifetime  
8 Warranty benefits, *Mendoza* class members are not required to install KSDS for the  
9 continued application of its 10-year/120,000 mile warranty. However, because the  
10 KSDS is a preventative software designed to alert drivers of engine irregularities  
11 that suggest bearing wear, all Class Vehicle owners have been advised to have it  
12 installed as soon as practicable and if they want to remain eligible for the Lifetime  
13 Warranty.

14 To the extent Knight Motors takes issue with the administration and execution  
15 of the *Mendoza* settlement (Dkt. 158 at 3-7), those issues should have been raised  
16 with the court that presided over the *Mendoza* settlement. Significantly, in the  
17 almost four years since the *Mendoza* settlement went final, Knight Motors has not  
18 raised *any* complaints with Judge Freeman of the Northern District about the  
19 administration of that settlement.<sup>3</sup> Instead it is trying to raise untimely gripes  
20 through a side door here—in a separate case overseen by a different judge and on an  
21 inadequate record.

22  
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24 \_\_\_\_\_  
document sought in discovery. (*See* Dkt. 158-1, PageID.6365-6376.)

25 <sup>3</sup> Thus, contrary to Knight Motors' suggestion, HMA did not misstate the record  
26 when it said no class member has voiced concerns to the *Mendoza* court about  
27 HMA's self-administration. (Dkt. 158 at 10). That statement was accurate when  
28 made. Recently, during the claims period for *this* settlement, a member of both the  
*Mendoza* and *In re: Hyundai and Kia Engine Litigation* classes did contact Judge  
Freeman about a claim for benefits that implicated both settlements, which counsel  
for both parties are cooperating to resolve.

1 **II. USED CAR DEALERS ARE ENTITLED TO FAIR SETTLEMENT**  
 2 **BENEFITS**

3 Knight Motors also incorrectly argues that used car dealers and auction  
 4 houses, like itself, were included in the settling class but barred from any settlement  
 5 benefits. In fact, used car dealers can avail themselves of several benefits provided  
 6 by the proposed settlement. For example, they can still obtain free installation of the  
 7 Knock Sensor Detection Software for any Class Vehicles, reimbursement of any  
 8 past expenses related to a Qualifying Repair incurred before the Notice Date (*see*  
 9 Dkt. 128-1 at 13-16), and/or a rebate under the rebate program (*id.* at 18-19).  
 10 Further, although used car dealers as well as other commercial entities are excluded  
 11 from Lifetime Warranty benefits (*id.* at 6), *consumer* purchasers of used Class  
 12 Vehicles would still be eligible for the Lifetime Warranty (*id.* at 11). This ensures  
 13 that consumers who drive the Class Vehicles for personal use are covered while  
 14 commercial entities, like Knight Motors, are prevented from exploiting the  
 15 settlement benefits for their own financial gain. (*See* Dkt. 158 at 6 (stating Knight  
 16 Motors was “incentivized” in part by the “financial gain” posed by the *Mendoza*  
 17 settlement agreement)).

18 **III. THE OPT-OUT PROCEDURE HERE IS STANDARD**

19 It is settled law that in order to have standing to lodge an objection to a  
 20 proposed settlement, a class member must remain in the class. *Lozano v. AT&T*  
 21 *Wireless Servs., Inc.*, No. CV020090CASAJWX, 2010 WL 11515433, at \*5 (C.D.  
 22 Cal. Nov. 22, 2010) (finding that objector opted out and thus lacked standing to  
 23 object to the settlement); *Kim v. Tinder, Inc.*, No. 18 CV 3093 JFW (ASX), 2019  
 24 WL 3064464, at \*1 (C.D. Cal. May 24, 2019) (“In a class action lawsuit, an objector  
 25 is a non-named *class member*.” (emphasis added)). This is not a procedural  
 26 requirement arbitrarily imposed by the parties in this action or this Court; it is a  
 27 long-established rule baked into the class action process. Class members, upon  
 28 notice of the settlement and examination of its terms, have the opportunity to

1 consider and assess whether they (1) want to opt out entirely and pursue individual  
2 claims or (2) remain in the class and object to the settlement and/or enjoy the  
3 benefits of the settlements. Here, Knight Motors is represented by counsel, owns  
4 more than 162 class vehicles, and is engaged in active litigation with HMA  
5 elsewhere. (*See* Dkt. 158 at 24-25.) It does not dispute it received notice of the  
6 settlement and had ample opportunity to discuss with its attorney the pros and cons  
7 of opting out of this class settlement and in consideration of the 162 class vehicles in  
8 its inventory (which would have sufficient value to justify such an opt out).  
9 Presumably, Knight Motors made an informed and calculated decision with its  
10 counsel not to exclude itself from the settlement, fully understanding the structure of  
11 the settlement. The exclusion deadline has now passed and Knight made its  
12 election; it must accept the consequences.

### 13 Conclusion

14 For the above reasons, Knight Motors' objection is without merit and is not a  
15 sufficient basis to deny the proposed settlement in this action.

16  
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18  
19 By /s/ Shon Morgan

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